IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 20630 of 2004

Between:

NO.14691540-X LDC YASHWANT SINGH, S/o. Sub Maj (Retd) J N Singh, R/o. HQ MC EME [FEME] SECUNDERABAD [AP].15

..... PETITIONER

AND

1 The Union Of India, Th: The Secretary, Ministry of Defence

New Delhi -11.
2 The Commandant, HQ MC EME Secunderabad [AP].
3 LT COL VIVEK UBEROI Presiding Officer of Court of Inquiry
(HQ MC EME,] Secunderabad [AP]

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a direction, orders or a Writ; more appropriately one in the nature of a WRIT OF MANDAMUS directing /declaring the action of the respondents herein "Declare the proceedings No.22401/RC/CR/Bay/Coi dated 03. Nov 2004, informing the petitioner herein about constitution of a Court of Inquiry to investigate into certain allegation against the petitioner herein and directing him to appear before him and participate in the proceedings of such Court of inquiry on 11-11-2004 at 1700 hrs, as being without jurisdiction, authority, contrary to statutory provisions and therefore ultra vires Article 21 of the Constitution of India and also ULTRA VIRES."

Counsel for the Petitioner: MR.VISHAL SAXENA

Counsel for the Respondents Nos.1 to 3: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court at the stage of admission made the following:

HONOURABLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.20630 OF 2004

ORDER:

The petitioner is a Civilian Servant serving the Army. It is not disputed that he is governed by the Classification, Control and Appeal Rules, 1965 (for brevity 'CCA Rules'). There is an allegation against the petitioner that he collected Rs.6 lakhs during July, 2003 from outsiders promising recruitment to the post of GD (Soldier) at 1 EME Centre, Secunderabad. After issuing the necessary show cause notice, the impugned notice dated 03.11.2004 was issued by the third respondent directing the petitioner to assemble at 17:00 hours on 11.11.2004 for the Court of enquiry. The petitioner being aggrieved by the said notice approached this Court. Therefore, this writ petition is challenging the notice on the ground that the army Act is not applicable to the petitioner and that the CCA Rules are applicable to him.

2. The petitioner contended that since the petitioner is governed by CCA Rules, the enquiry has to be conducted by a Civilian Officer and not an Army Officer. Therefore, he requested to quash the notice, dated 03.11.2004.

3. Since the petitioner is governed by CCA Rules, the enquiry has to be conducted according to the procedure prescribed under those Rules. Since there is no reference in the impugned notice that the enquiry is being conducted under the CCA Rules and as the enquiry officer is said to be an officer of the Army, the impugned notice dated 03.11.2004 is quashed. The respondents are at liberty to proceed with the enquiry against the petitioner as per the procedure prescribed under the CCA Rules.

4. The Writ Petition is accordingly allowed. No order as to costs.

Dr. G.YETHIRAJULU, J

11th November, 2004

SKM

TO

1 The Secretary, the Union Of India, Th: Ministry of Defence

New Delhi -11.
2 The Commandant, HQ MC EME Secunderabad [AP].
3 LT COL VIVEK UBEROI Presiding Officer of Court of Inquiry
(HQ MC EME,] Secunderabad [AP]

4 Two C.D. Copies.